

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED

JUN 23 2016

Clerk, U.S. District Court
District Of Montana
Billings

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

JOSE ANGEL TORRES-
GUARDADO,

Defendant/Movant.

Cause No. CR 07-22-BLG-SPW
CV 16-82-BLG-SPW

ORDER TRANSFERRING § 2255
MOTION AND DENYING
CERTIFICATE OF
APPEALABILITY

On June 17, 2016, Defendant Torres-Guardado filed a motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. He is a federal prisoner proceeding pro se.

Torres-Guardado filed his first § 2255 motion on January 23, 2009. *See* Mot. § 2255 (Doc. 59). It was denied on June 15, 2009. The Court of Appeals granted a certificate of appealability but affirmed the denial of relief on December 19, 2012. *United States v. Torres-Guardado*, No. 09-36095 (9th Cir. Dec. 19, 2012) (Doc. 76). A petition for writ of *certiorari* was denied on June 10, 2013. Clerk Letter (Doc. 81). Thereafter, Torres-Guardado filed other motions collaterally challenging his conviction and sentence (Docs. 82, 87), but all were dismissed (Docs. 83, 86, 88, 91).

The Court of Appeals has not authorized Torres-Guardado to file a second § 2255 motion in this Court, *see* 28 U.S.C. §§ 2255(h), 2244(c), so this Court lacks jurisdiction, *Burton v. Stewart*, 549 U.S. 147, 149 (2007) (*per curiam*).

The Court of Appeals, however, has jurisdiction to hear an application for leave to file a second or successive motion. 28 U.S.C. § 2244(b)(3). Because Torres-Guardado makes a claim under *Johnson v. United States*, __ U.S. __, 135 S. Ct. 2551 (2015), it is in the interests of justice to transfer his motion to the Court of Appeals to cure this Court's want of jurisdiction. 28 U.S.C. § 1631.

A certificate of appealability is denied because this Court clearly lacks jurisdiction and Torres-Guardado's opportunity to file under *Johnson* is protected by transferring his motion to the Court of Appeals. *Gonzalez v. Thaler*, __ U.S. __, 132 S. Ct. 641, 648 (2012) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

Accordingly, IT IS HEREBY ORDERED as follows:

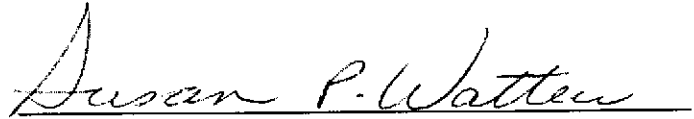
1. Torres-Guardado's § 2255 motion (Doc. 92) is DISMISSED in this Court and TRANSFERRED to the Court of Appeals as an application for leave to file a second or successive § 2255 motion in this Court.

2. A certificate of appealability is DENIED. The Clerk of Court shall immediately process the appeal if Torres-Guardado files a Notice of Appeal;

3. The Clerk of Court shall ensure that all pending motions in this case and in CV 16-82-BLG-SPW are terminated and shall close the civil file by entering a

judgment of dismissal and transfer to the Court of Appeals.

DATED this 17th day of June, 2016.

A handwritten signature in cursive script, reading "Susan P. Watters", written over a horizontal line.

Susan P. Watters
United States District Court